THE YAZOO LAND COMPANIES

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The spirit of speculation in land was a prominent characteristic of the United States at the close of the last century. Although the Crown had received frequent petitions for land grants in the West, there was little westward migration until the time of the Revolution. Then the number of the emigrants, the cheapness of the lands, and the lack of an established system of sale in small quantities offered many inducements for the formation of great land companies, whose opportunities for speculation were increased by the depreciated currency and the general ignorance concerning the West. So strong did this spirit of speculation become that in 1796 an English traveller could say: "Were I to characterize the *United States*, it should be by the appellation of the *land of speculation*."[2] In spite of its exag-

[1] For assistance in collecting the scattered material for this paper my thanks are due to Dr. Frederic Bancroft, Librarian of the Department of State, Mr. Brinton Coxe of Philadelphia, Mr. B. J. Davis of Atlanta, Colonel R. T. Durrett of Louisville, Mr. Charles Gayarré of New Orleans, Prof. J. F. Jameson of Brown University, Mr. John Jameson of Boston, Prof. W. R. Sims of the University of Mississippi, Prof. W. G. Sumner of Yale University, and Mr. James Wilkinson of New Orleans, to the assistants of the Clerk of the Supreme Court of the United States, and to the many librarians who have lent me rare works relating to the subject. Through the kindness of President William Preston Johnson and Professors D. J. Lingle and J. A. Fernandez de Trava of Tulane University I have obtained copies of manuscripts in the library of the university. I am particularly indebted to Hon. William Wirt Henry for the loan of papers of Patrick Henry, and to Colonel Charles C. Jones, Jr., and my colleague Prof. Frederick J. Turner for reading the proof-sheets of the paper.

[2] Priest's "Travels," 132. See also La Rochefoucault's "Travels" (London, 1799), i., 144, ii., 600, 608–617; Dwight's "Travels," i., 218–222.

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geration this assertion contained much truth. "All I am now worth was gained by speculations in land," wrote Timothy Pickering in the same year,[1] and many eminent men could have said the same, often with a later experience quite similar. Land speculation involved Washington, Franklin, Gallatin, Patrick Henry, Robert Morris, and James Wilson, as well as many less widely known.

Land companies found a particularly inviting field in the South, where large tracts of land still remained in the hands of the States. Scarcely a State escaped the speculators, but the most extensive operations were carried on in Georgia, where the magnitude of the speculations, the means which were employed, the resistance of the State, the persistent efforts of the purchasers to obtain satisfaction, and the final settlement by Congress and the Supreme Court, all united to form an important chapter of our history.

THE WESTERN TERRITORY OF GEORGIA.

At the close of the Revolution the territory north of the thirty-first parallel which is now included in the States of Alabama and Mississippi was the subject of various conflicting claims. South Carolina contended that this territory was comprised within the limits of her original charter; Georgia claimed it by virtue of the commissions issued to Governor Wright; the United States maintained that it had been withdrawn from the domain of these colonies by later acts of the Crown, conquered by the nation in the Revolution, and ceded to the nation by the treaty of peace; while Spain denied England's right to cede lands below 32° 30′, and held that region as a conquest from England. Georgia's assertion of title, re-enforced in 1787 by the withdrawal of South Carolina,[2] was resisted by the federal authorities. In 1788 a proposed cession of the region below 32° 30′ was rejected by Congress because it contained

[1] Pickering's "Pickering," iii., 296.

[2] Except from a narrow strip on the north, soon ceded to the United States. Spain relinquished her claim in 1795.

as a condition the guarantee of the remainder,[1] and in 1797 a committee of the Senate made a report strongly adverse to the State's claim.[2] The final victory, however, remained with Georgia. In the compromise of 1802 all her demands were granted, and in 1827 the validity of her title was affirmed by the Supreme Court in an opinion which thus sums up the matter:

"There are several reasons for putting the claim of the United States out of the question. She has abandoned it, and, it is very clear, could never have maintained it. The very ground on which she denied the capacity of Spain to conquer, or take by cession, the territory on the Mississippi, was fatal to the pretensions set up by her against Georgia and South Carolina, to wit, that Spain could not acquire by conquest a territory within the limits claimed by an ally in the war. . . . There was no territory within the United States that was claimed in any other right than that of some one of the confederated States; therefore, there could be no acquisition of territory made by the United States distinct from or independent of some one of the States."[3]

Aside from the question of Georgia's title to the lands, there were serious difficulties in the way of making use of them. They were occupied by the Chickasaws, Choctaws, Cherokees, and Creeks, tribes over which the federal government claimed and exercised an immediate protectorate. "No one could say what was the value of Georgia's title, for it depended on her power to dispossess the Indians; but however good the title might be, the State would have been fortunate to make it a free gift to any authority strong enough to deal with the Creeks and Cherokees alone."[4] The attacks of the southern Indians on frontier settlements were kept up by the intrigues of the Spaniards, themselves sure to oppose by force all attempts to settle the region south of the Yazoo. The value of western lands for com-

[1] Journals of Congress, iv., 834.

[2] "American State Papers, Public Lands," i., 79. References are to the single-column folio edition.

[3] Harcourt *vs.* Gaillard, 12 Wheaton, 523. Compare Fletcher *vs.* Peck, 6 Cranch, 87. The documents bearing on Georgia's claim were collected by the Attorney-General in 1796, and are printed in "State Papers, Public Lands," i., 34–67. The foregoing statement of the grounds of the various claims is, of course, not exhaustive.

[4] Henry Adams's "History of the United States," i., 303.

mercial and agricultural purposes depended almost entirely on the navigation of the Mississippi, over which Spain exercised sole control. So strongly was this felt in the West, that to gain the right to navigate the Mississippi many were willing to leave the Union and become Spanish subjects. In the light of these difficulties, Georgia was quite ready to reap a small financial gain by disposing of the lands on the first offer of favorable conditions.

THE SOUTH CAROLINA YAZOO COMPANY.

The advantages of a commercial settlement on the Mississippi near the mouth of the Yazoo were readily apparent. The only obstacle seemed to be the opposition of Spain and the Indians, and to remove this a number of citizens of South Carolina and Georgia directed their efforts. In 1785 an application was made to Georgia for a grant of lands. As that State "did not yet feel ready to dispose of her territory," nor, doubtless, to protect it from Indians and Spaniards, all that was obtained was the organization of a county to be known as Bourbon, in which, when lands were granted, actual settlers were to have the preference at a price not to exceed a quarter of a dollar an acre. This county, which continued in existence three years, was bounded by the Mississippi, the Yazoo, the thirty-first parallel, and the limit of the territory relinquished by the Indians.[1] The consent of the Choctaws to the proposed settlement was sought by the purchase from one John Wood of a deed which he had obtained from them to a tract of two or three million acres lying near the mouth of the Yazoo. For colonists the projectors looked to Kentucky, whence John Holder[2] engaged to conduct four hundred families to Walnut Hills (now Vicksburg) before the end of 1789. In the execution of this contract Holder failed entirely. Meanwhile the original plan of the projectors was enlarged,

[1] "Public Lands," i., 100.

[2] A captain in the Revolution. Collins's "History of Kentucky," i., 13, 255; Forman's "Narrative of a Journey down the Ohio and Mississippi," edited by L. C. Draper, 52.

chiefly through the influence of Major Thomas Washington.[1] Articles of association were adopted, constituting a company to be known as the South Carolina Yazoo Company. The original members were but four in number, Washington of Georgia, and Alexander Moultrie, William Clay Snipes, and Isaac Huger of South Carolina, Moultrie being appointed director. Among those who joined later was the famous Creek chief Alexander McGillivray. To the former idea of a commercial station there was now added the plan of securing an extensive territory and opening it to agricultural settlement.[2]

THE GRANT OF 1789.

Accordingly, November 20, 1789, a petition was presented to the Georgia legislature, setting forth that the company, having already begun a settlement under the Bourbon act, desired a confirmation of that interest. In this they acted "as well from a motive of general good to mankind and a happiness and prosperity of this State and the union; as their own." They had "in respect to their own Settlements established Connections in Europe, America, and in this State; whereby" it was certain that as soon as their application was granted, "an affrican trade and European Commerce" would "take place at the Yazoo to an immense and vast amount."[3] Applications were at the same time

[1] Washington, whose real name was Walsh, was an unprincipled speculator, afterward hanged in Charleston for counterfeiting South Carolina indents. —*Georgia Gazette*, March 24, 31, 1791.

[2] "An Extract from the Proceedings of the South Carolina Yazoo Company" (Charleston, 1791), i., 15–23, 25; Gayarré's "History of Louisiana under Spanish Domination," 272, 273.

[3] Papers of the United States Supreme Court, 1798: Moultrie *et al. vs.* State of Georgia *et al.*, Document H. Compare a letter of Francis Watkins to Patrick Henry, July 5, 1790, in which he speaks of being "successful on the other side of the Atlantic," and another letter in the Henry MSS., dated February 10, 1790, and evidently written by Moultrie to the Virginia Yazoo Company: "Since the passing of the Law, much has been done in this State, in spreading the Basis of a Commercial System, in Connection with our Company, throughout various Parts of Europe and America: both in regard to Population, from those countries, as well as the various branches of Traffick, & the Affrican Trade."

received from the Virginia Yazoo Company and the Tennessee Company. A bill was brought into the Senate and after amendment passed, on the 7th of December, by a vote of six to three. When it reached the House, there appeared another set of petitioners, the Georgia Company, offering a much higher price for the lands. Efforts to insert this company among the other applicants failed, as did also a motion to increase the amount to be paid; and the bill passed without amendment, and received the Governor's signature on the 21st of December.[1]

This act granted to the South Carolina Yazoo Company a tract bounded by the Mississippi, the thirty-third parallel, the Tombigbee, and a line drawn east from a point just above Natchez, and containing over 10,000,000 acres of what is now southern Mississippi and Alabama. The Virginia Yazoo Company received 11,400,000 acres, being all the land of Georgia west of Bear Creek and the Tombigbee and north of the thirty-third parallel. The Tennessee Company's grant included 4,000,000 acres in the region of the Tennessee. The lands in each case were to be reserved as a pre-emption for two years, and at the end of that period, if the stipulated amounts had been paid, grants were to be issued to the companies as tenants in common in fee-simple. The amounts to be paid were: South Carolina Company, $66,964; Virginia Company, $93,741; Tennessee Company, $46,875. The companies were to refrain from attacks on the Indians. The State was not to be liable for previous claims, nor to be put to expense in keeping peace between the grantees and the Indians or in extinguishing the Indian title.[2]

RELATIONS WITH SPAIN.

The South Carolina Company at once began active measures toward forming a settlement. As their agent in the West they selected Dr. James O'Fallon, a Revolutionary

[1] *Georgia Gazette*, January 7, 1790; Stevens's "History of Georgia," ii., 464 ff. The original public records relating to the sale have been lost or destroyed.

[2] "American State Papers, Indian Affairs," i., 114; Watkins's "Georgia Digest," 387; Moultrie *vs.* Georgia, Document A.

soldier, whom they likewise admitted as a shareholder. He was instructed to proceed at once to Lexington, Kentucky, to bring Holder to account, and, if it could be done peaceably, to go down to the Walnut Hills with four or five hundred settlers. He should then "proceed to New Orleans and there take every possible step for securing the concurrence and favor of the Spanish *government;* to represent to them fully the commercial and various other advantages which they might derive from the vicinity and friendship of the company's settlement; to use every endeavor for preventing any difference or dispute between the company's people and the Spaniards or Indians, to make this a leading object of every measure, and to establish on the firmest footing, the company's reputation for justice, humanity, and an accommodating disposition." He also received private instructions, the contents of which are not known.[1] Edmund Phelon was soon afterward sent to the Yazoo country to prepare the Choctaws for the intended settlement.[2]

O'Fallon set out early in the spring of 1790, reaching Lexington about the beginning of May. On his way he secured the co-operation of General McDowell of North Carolina, of Colonel Farr of South Carolina, and of John Sevier, who undertook to act as sub-agent for the Franklin settlements. Each was promised a share in the company's purchase.[3]

On his arrival in Kentucky O'Fallon was brought into close relations with General James Wilkinson and thus entered the maze of Spanish intrigues. Wilkinson was attempting to effect the separation of Kentucky from the Union, and for his services received a regular pension from Spain.[4] Informed of the company's designs by Major

[1] "Extract from the Proceedings," i., 26, 27.

[2] "Public Lands," i., 168.

[3] "Extract from the Proceedings," i., 26, 30, 31. These acts, as well as later grants to Scott and Muter in Kentucky, were approved by the company but never formally confirmed.

[4] This estimate of Wilkinson's character has been attacked by Mr. James Wilkinson of New Orleans in the *New Orleans Times-Democrat* of April 15 and May 20, 1883, but Wilkinson's corruption cannot well be questioned in

Washington in February, 1789, he discussed the subject with Miro, the Spanish Governor of Louisiana, and wrote the company offering to supply their need of a man of experience and popularity who should act as agent and secure the assistance of Miro, without which the enterprise would be wholly impracticable. They must, he said, obtain through Spain further concessions from the Indians, for their Choctaw deed was not worth a pinch of snuff.[1] Moultrie promptly accepted the offer of Wilkinson's services, but wrote him that the agency had already been granted. Of this letter O'Fallon was the bearer.[2]

Wilkinson had informed Miro of his letter to the company, written "to obtain the agency of that affair, and to induce the company to sue for" Miro's protection. "If I succeed," he said, "I am persuaded that I shall experience no difficulty in adding their establishment to the domains of his Majesty, and this they will soon discover to be their interest. . . . I have undertaken to place in your hands the whole control of this affair. . . . I will keep you well informed of every movement which I shall observe, and it will be completely in your power to break up the projected settlement, by inciting the Choctaws to incommode the colonists, who will thus be forced to move off and establish themselves under your government."[3] Miro replied that the territory granted to the company, so far as it did not belong

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view of the evidence contained in Clark's "Proofs of the Corruption of General Wilkinson," Gayarré's "History of Louisiana," and the letter of Yrujo to Cevallos, published in Henry Adams's "History of the United States," iii., 342. It is possible that he did not receive a pension until later. See John Mason Brown's Frankfort Centennial Address (Louisville, 1886), 7, 16.

[1] Wilkinson to Moultrie, Huger, Snipes, and Washington, January 4, 1790. A translation of the original, copied from the archives of Spain, is in the library of Tulane University. Part of it has been retranslated by Gayarré, "Spanish Domination," 274. The version in the "Extract from the Proceedings" (i., 24) differs somewhat from the Spanish copy. For the interesting history of the Tulane University collection see the Report of the Secretary of State of Louisiana for 1850; *New Orleans Times-Democrat*, June 3, 1883; House Miscellaneous Document No. 22, 46th Congress, second session.

[2] "Extract from the Proceedings," i., 24, 25; Gayarré, 281.

[3] Gayarré, 276.

to the Indians, was in the possession of Spain, and that all attempts to settle it would be resisted.[1] Convinced of the necessity of gaining Miro, O'Fallon wrote him a remarkable letter. After setting forth pompously his relations to the company and his well-known devotion to the interests of Spain, he says that, having long ago conceived this great project, he had enlisted in it the members of the company and obtained from them plenary powers for its execution. Without their having at first suspected his object, he had "insensibly prevailed upon them to acquiesce in" his "political views (after the obtaining of the concession), and led them to consent to be the slaves of Spain, under the appearance of a free and independent colony,[2] forming a rampart for the adjoining Spanish territories, and establishing with them an eternal, reciprocal alliance, offensive and defensive." Separation from the Union had been resolved upon, an example that would be followed by the other western settlements. In return for her secret co-operation Spain would receive everything except the sacrifice of their liberty of conscience and their civil government. O'Fallon's authority for these statements would appear when he arrived at New Orleans and showed his secret instructions.[3] Not long afterward Wilkinson wrote again to Miro, approving O'Fallon's plans, and adding: "If the sentiments which he invariably expresses are to be believed (and I am inclined to put faith in them), he is a great friend to Spain."[4]

In August, Miro sent to Madrid copies of this correspondence, together with his comments upon it. He showed the advantages of such a settlement in defending Louisiana against the United States and in extending the commerce of New Orleans; yet he doubted the policy of "taking a foreign state to board." All the benefits of such a settlement, he argued, could be secured if Spain should people the territory on her own account. In case a middle course

[1] Gayarré, 282.

[2] Not "State," as Gayarré translates *colonia*.

[3] Lexington, May 24, 1790. Spanish MSS., Tulane University; almost entire in Gayarré, 288–293.

[4] *Ibid.*, 293.

were preferred, it might be proper to permit the company to colonize the territory as subjects of Spain under the regulations imposed upon all immigrants. Miro added that he had secured the opposition of all the Indian tribes to the three land companies, and had promised to supply the Indians with powder and ball for the defence of their rights. To O'Fallon he would still hold out hopes of success.[1]

How far the South Carolina Company was involved in intrigues with Spain it is difficult to determine. As early as October, 1789, they had written to Holder to cultivate the friendship of the Spaniards as much as possible and conceal nothing from them. "We consider," said they, "their interests and ours as intimately connected and inseparable. . . . We confidently flatter ourselves that we shall form a highly advantageous rampart for Spain, and that we shall ourselves feel that such should be the case."[2] This letter contained nothing that indicated the least subordination to the United States, and Miro inferred from it that the company intended to form an independent state.[3] In the elaborate plan of colonization drawn up by the secretary they were recommended to procure an efficient civil establishment from Georgia, and when the population should reach sixty thousand, to form a new State under the laws of the Union.[4] Small weight, however, should be given these expressions, since the pamphlet in which they are found was designed for the public, if not also for the federal authorities,[5] and the plan represents at best the opinion of the secretary only. If O'Fallon expressed the ideas of the company, the matter is clear, but it seems possible from the exaggerated tone of his letter that here, as in some other respects, he exceeded his authority. To pronounce a final opinion would be unsafe in the absence of O'Fallon's secret

[1] Gayarré, 293–300. [2] *Ibid.*, 273. [3] *Ibid.*, 287.

[4] "Extract from the Proceedings," iii., 9, 12.

[5] The "Extract from the Proceedings" was sent to Washington, as is shown by the following on the fly-leaf of the copy in the library of the Maryland Historical Society: "To George Washington Esq^{r}; President of the United States From His most Ob^{t}. hum: Ser^{t}: Ax^{r}: Moultrie Presid^{t}: S^{o}: Car: Yaz: Com^{y}: July 13th: 1791."

instructions, but the fact that he claimed these instructions as authority for his proposals throws strong suspicion upon the company.

O'FALLON IN KENTUCKY.

The action of Georgia in disposing of her western territory did not escape the notice of the federal authorities. The matter was discussed by the Cabinet as early as April, 1790,[1] and in August Washington issued a proclamation setting forth the law and treaties which protected the Indians, and ordering their observance.[2] One month later, O'Fallon, acting, we are told, on the advice of General St. Clair, wrote the President a characteristic letter, asking permission to arrange for trade between his colony and the Indians, and to purchase more lands within the company's charter. "Your Excellency," he writes, "may depend upon my discretion in the use of such authority, and that your confidence will, in no one instance, be abused; without such trust, evils may happen."[3]

Meanwhile, O'Fallon went busily on with his preparations, even claiming for them the authority of Congress.[4] Extensive contracts were made for negroes and provisions, transportation and shelter. A battalion was organized, "aptly detailed and apportioned into one troop of cavalry, one company of artillery, and eight companies of infantry riflemen, as in order arranged, at foot; . . . these troops being intended, although no danger is, at present, apprehended, to ensure the greater security of the company's rights, and their own; as well as to the rest of their fellow settlers' lives, liberties, and properties."[5] George Rogers

[1] Washington's "Diary," 129 ff.; Jefferson's "Writings," vii., 467.

[2] "American State Papers, Indian Affairs," i., 112, 172.

[3] "Indian Affairs," i., 115. Compare "Extract from the Proceedings," i., 32, 33; and Maclay's "Journal" (edition of 1890), 378.

[4] "Indian Affairs," i., 114.

[5] Military articles of contract, etc., "Indian Affairs," i., 115–117; "Extract from the Proceedings," i., 33–35. Understanding by O'Fallon's plan for a "defensive establishment" nothing more than a colony armed for its own defence and a fort for refuge, the company had signified their approval. Later, they ordered him to disband the battalion. "Extract from the Proceedings," iii., 15.

Clark, it was rumored, would be chief in command,[1] and O'Fallon even declared that he had "no doubt of the *battalion* being speedily put upon federal *establishment* and pay."[2] It was expected in Lexington that General Scott would take five hundred families to the settlement, and that Wilkinson and Sevier would follow, each with a thousand fighting men and their families. "Gen. McDowell accompanies the Frankliners from the Long Island, where they are to embark with 300 from the back parts of North Carolina, and 200 with Capt. Alston from Cumberland."[3] In his last despatch to the company, dated Kentucky, November 6, 1790, O'Fallon says that he has learned from his clerk at New Orleans (Nolan) that he need expect no opposition from the Spaniards or Indians, and has accordingly "closed with the golden moment of opportunity" and resolved to send down at once three hundred troops. A second division of three hundred troops and six hundred families would follow in February.[4]

Again did the federal government interfere, this time more effectively. A proclamation was published warning O'Fallon's associates,[5] and the United States district attorney was requested to proceed against him according to law. In case these measures should not prove sufficient, military intervention was proposed.[6] After this, O'Fallon's extensive preparations suddenly disappear. Wilkinson deserted him, his associates fell away, and he married a sister of George Rogers Clark and settled in Kentucky. The company heard nothing further from him, and in August, 1791, their agent left Walnut Hills. The services of the district

[1] Wilkinson to Philip Nolan, quoted in Claiborne's "History of Mississippi," i., 157.

[2] "Extract from the Proceedings," i., 35.

[3] Letter from a gentleman in Lexington to a friend in Philadelphia, October 20, 1790, in *Kentucky Gazette*, February 26, 1791.

[4] "Extract from the Proceedings," i., 38, 39.

[5] *Gazette of the United States*, March 23, 1791; *Georgia Gazette*, April 14; *Kentucky Gazette*, May 14.

[6] Jefferson's "Writings," iii., 256; Knox to St. Clair, "Indian Affairs," i., 172.

attorney were not needed; Washington's proclamation was sufficient.[1] Both Spain and the Indians had made vigorous preparations to oppose the expedition, and the consequences of a collision might have been serious.[2]

LATER HISTORY OF THE SOUTH CAROLINA COMPANY.

Efforts to settle the lands had failed; efforts to complete the purchase failed also. August 13, 1790, the company paid into the State treasury $2,703.86 in Georgia paper medium, and on the 11th of September a further payment of $2,142.86 was made. On the 19th of December, 1791, just before the expiration of the period allowed by the act, representatives of the company tendered the State Treasurer the remainder in South Carolina paper money, Continental money of 1776, and Georgia certificates of various dates.

[1] Pope's "Tour through the Southern and Western Territories of the United States," 29; Forman's "Journal," 52; "Virginia Calendar of State Papers," v., 287; Marshall's "History of Kentucky," i., 372, 373; "Public Lands," i., 169; Haywood's "History of Tennessee" (edition of 1823), 254; Claiborne's "Mississippi," i., 157; *Gazette of the United States*, May 4, 1791, and other newspapers of the time. Claiborne says that the expedition was suppressed by General St. Clair, under an order from the Secretary of War, and Haywood says that it was prevented by military force. I can find no evidence for these statements; the writers may have been misled by the letter of Knox to St. Clair, cited above. Military interference was to be resorted to, if at all, only after the other means had failed. If arms had been used, the fact would have been widely known. Marshall says that the President's proclamation stopped enlistment, and the company's agent at Walnut Hills considered this the cause of the failure of the expedition. Pope, who had excellent opportunity to know, hints that O'Fallon's ardor was cooling even before the President's proclamation. No record of a prosecution of O'Fallon exists either in the Department of Justice or in the district court.

[2] Gayarré, 300; *Georgia Gazette*, January 6, 1791; Pope's "Tour," 28, 29. Compare the following extract from the diary of John Halley, for which I am indebted to the kindness of Col. R. T. Durrett, of Louisville. Halley left Boonesboro, Ky., April 27, 1791, and on the 29th makes this entry: "On 29th passed Yazoo River nine miles below new town started by the Spaniards. Sentinels with taps. Called on the Governor and he asked me what was the news from Kentucky, and what had become of Dr. O'Fallon and company; and if the men were coming down to settle at that place. I told him not that season. The commandant walked with me & showed me his artillery among which was a 24 pounder. He pointed to it and said it was bone *(sic)* for Dr. O'Fallon. There were 9 or 10 twelve pounders."

This the Treasurer declined to receive, and a formal certificate of such tender and refusal was given, the earlier payments remaining in the treasury. The State authorities held that the act contemplated payment in specie only, and that if any doubt had existed on this point, it was removed by a resolution passed by the legislature in June, 1790, directing the Treasurers after the following August to receive only gold and silver in discharge of debts due the State.[1]

When the company is next heard from, it is in the Supreme Court of the United States. In 1796 they filed a bill in equity against the State of Georgia and the Georgia and Georgia Mississippi companies, grantees of the lands under the sale of 1795, who, it was alleged, had purchased with full knowledge of the prior claim. The case was set for a hearing at the August term, 1797, and adjourned until the following term. In January, 1798, the eleventh amendment to the Constitution was declared in force. Its effect was to put an end to all suits brought against a State by citizens of another State,[2] and as Moultrie *vs.* Georgia was of that character all proceedings in it were stopped.[3]

In 1802 Georgia ceded to the United States her rights to the territory west of the Chattahoochee. The task of settling private claims was thus left to Congress, and Madison, Gallatin, and Levi Lincoln were appointed to receive petitions and report. In their petition to these commissioners the South Carolina Company, maintaining that they had fulfilled their part of the contract with Georgia, claimed indemnification for the loss of their lands and for the expenses incurred in connection with the grant, thus asking the United States to compensate them for the money advanced to O'Fallon, who was engaged, not only in raising an expedition illegally, but,

[1] Papers in Moultrie *vs.* Georgia, especially Documents E, F, G, and C; "Extract from the Proceedings," Appendix, 5, 6; "Public Lands," i., 165 ff., 201.

[2] Hollingsworth *vs.* Virginia, 3 Dallas, 378.

[3] Papers of the Supreme Court, 1798; "Public Lands," i., 167. In 1797 the company tried to effect a transfer of their land to the United States. John Adams's "Writings," viii., 551.

if we are to believe his own letters, in founding a settlement independent of the United States and dominated by Spain. The question of compliance with the conditions of the sale turned on the medium of payment which the act demanded. On its face the act simply directed to be paid "the amount of sixty-six thousand nine hundred and sixty-four dollars." To show that payment in paper was thus permitted, the company introduced the testimony of several who had been members of the legislature in 1789 and had understood that the lands were to be paid for in paper, as well as a protest in which the Speaker of the House and thirteen others had objected to the sale because it allowed payment in audited certificates.[1] Attention was also called to their petition of 1789, offering to pay "in public securities or the money of the State."

The commissioners reported February 16, 1803, that, in their opinion the company had no claim upon the government either for land or for compensation. In the following December the company presented their petition directly to Congress. The committee to which the petition was referred pronounced decidedly against it, holding that the act should be interpreted by itself, and that, if other matter were brought in, the resolution of June, 1790, forbidding payment in certificates, was fatal to the claim. The House resolved to give the company one more chance. January 16, 1804, Moultrie was heard in their behalf at the bar of the House and the matter recommitted. The opinion of the committee remaining unchanged, in March their report was laid on the table and the whole subject dropped.[2]

PATRICK HENRY AND THE VIRGINIA YAZOO COMPANY.

In the preface to the fifth volume of the "Virginia Calendar of State Papers,"[3] Mr. Sherwin McRae speaks at some

[1] Moultrie *vs.* Georgia, Document B; *Georgia Gazette*, January 7, 1790.

[2] Annals of Congress, December 28, 1803, January 7, 11, 16, 23, 25, March 13, 1804; "Public Lands," i., 133, 165–172, 197. For a later petition in behalf of Washington's estate, see House Journal, 10th Congress, 166.

[3] Pp. iv.–vii.

length of the dangers which threatened the United States in this period through the schemes of land speculators. Our escape from these schemes, he tells us, was due to the patriotism and public virtue of Patrick Henry, who, in a deposition made in 1777,[1] says that, on becoming a member of the first Virginia convention and the first Continental Congress, he determined to "disclaim all Concern and Connecion with Indian Purchases," although shares were frequently offered him. The reasons given for this resolution were the enormous extent of the purchases, the probability of being called upon to settle disputes over such claims, and, in event of war, the likelihood of the soil being claimed by the American States,—a reason which may indicate the man of business as well as the patriot. Thus, according to Mr. McRae, the great evils involved in the success of the Indiana and New Madrid companies were avoided.

Patrick Henry, however, did not always hold aloof from land companies. The opportunities for successful investment were too evident to escape the eye of one who "was peculiarly a judge of the value and quality of lands."[2] Early in 1789 he began to inquire of Grayson and Lee, the United States Senators from Virginia, concerning the title to the western territory of Georgia, and the attitude of Spain toward the navigation of the Mississippi and emigration from the United States.[3] Assured that the territory unquestionably belonged to Georgia, Henry, with David Ross, Abraham B. Venable, Francis Watkins, and other prominent Virginians, later in the same year formed the Virginia Yazoo Company for the purchase of lands from Georgia, and, recognizing the advantages which the South Carolina Company claimed, made overtures for a consolidation.[4] When this attempt failed, they petitioned the

[1] "Virginia Calendar of State Papers," i., 289.

[2] Spencer Roane, MS., quoted in Tyler's "Patrick Henry," 341.

[3] Grayson to Henry, June 12 and September 29, 1789, in Tyler's "Letters and Times of the Tylers," i., 165–171; Richard Henry Lee to Henry, May 28 and September 14, 1789, in Lee's "Life and Correspondence," ii., 95, 99.

[4] Extract from the "Proceedings of the South Carolina Yazoo Company," i., 23.

Georgia legislature, and received the grant described above. Their plans, they declared, did not involve immediate colonization. Every one was expressly forbidden to settle within their bounds, their intention being "first to complete their payments to the State for the Lands purch'd; next to quiet the Indian claims agreeably to Law, and to have the permission and approbation of the General Governm't for the settlement, and that the first Emigrants shall be accompanied with civil & Militia officers Legally appointed." [1]

The company's offer of depreciated certificates was, however, refused by the State authorities, and no attempt was made to settle the lands. In 1794 they decided to make another effort to secure the grant. Robert Morris, Wade Hampton, and others agreed to co-operate, and John B. Scott was sent to Georgia to obtain from the legislature a fulfilment of the contract, and, if necessary, to make concessions. At Augusta, Scott found the new Yazoo companies too strong for him, and accordingly threw up his agency and made the best terms he could for himself in the Upper Mississippi Company. The Virginia Company resolved to sue the State of Georgia, and retained counsel for this purpose. Nothing came of this, nor did their petition to Congress, presented along with the one from South Carolina, bring them any relief. When their claim came before Congress, it was suggested that they were involved in the fraudulent purchases of 1795, and this appeared to the congressional committee a question of such intricacy that no satisfactory conclusion could be drawn. The history of Scott's transactions shows clearly that the company had no share in the grant of 1795.[2]

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[1] Ross to Governor Randolph, April 10, 1791, "Virginia Calendar of State Papers," v., 288. Compare Cowan's petition in "Public Lands," i., 172. Similar expressions were credited to Henry, who added that if the protection of Congress were not granted, they would have recourse to their own means. Washington's "Diary," 163.

[2] "Our Opponents were full handed, paid down 100,000 dollars—& our Agent had no more than his own purse (?), & what I could give him barely sufficient to defray his expenses. Your Money came too late in Aid for that purpose." The New York and Philadelphia men failed to send anything.

Patrick Henry's relations with the Virginia Yazoo Company are especially interesting by reason of certain charges made by Thomas Jefferson in a manuscript first published in 1867.[1] This manuscript, whose genuineness has not been questioned, is evidently the one furnished Wirt while he was preparing the "Life of Henry." The parts relating to the Yazoo purchase are as follows:

"about the close of the war he [Henry] engaged in the Yazoo speculation, & bought up a great deal of depreciated paper at 2/ & 2/6 in the pound to pay for it. . . . from being the most violent of all anti-federalists however he was brought over to the new constitution by his Yazoo speculation, before mentioned. the Georgia legislature having declared that transaction fraudulent & void, the depreciated paper which he had bought up to pay for the Yazoo purchase was likely to remain on his hands worth nothing. but Hamilton's funding system came most opportunely to his relief, and suddenly raised his paper from 2/6 to 27/6 the pound. Hamilton became now his idol," etc.

When he says that the Georgia legislature declared the transaction fraudulent and void, Jefferson evidently confuses the grant of 1795 with the earlier speculation.[2] Patrick Henry certainly had no share in the purchase of 1795. Whether the value of his certificates was increased by the assumption of State debts is, however, another question, and on this we have a contemporary statement of Jefferson, free

"Mr. Scott finding the object lost, sold his certificates @ 6/8 in the £—& took one share of another Co. which consisted of 20 shares, & purchased about 1&½ Millions Acres on the Northern boundary, sent (?) relinquishing his Agency & all further connections with our Co." Francis Watkins to Henry, March 7, 1795, Henry MSS. Owing to the gaps in the Henry MSS., and the loss of Henry's letters to Francis Watkins, our knowledge of the history of the company is incomplete. Additional information is given in "Public Lands," i., 172–179, 197–203.

[1] It appeared first in the *Philadelphia Age*, and was reprinted in the *Historical Magazine*, xii., 93.

[2] In this he anticipated many later writers. Thus Hildreth (iv., 643) connects Henry with the fraud of 1795, and McMaster makes his account of the Yazoo companies of little worth by confusing the sales of 1789 and 1795 (ii., 479, 480). The same confusion lurks in the singularly inaccurate note in the "Narrative and Critical History of America" (vii., 534). This note would have been improved if the facts, as well as the references, had been taken from Alexander Johnston's excellent article in Lalor's "Cyclopædia of Political Science" (iii., 1127–1130).

from the confusion of the later manuscript. In a letter to Washington in 1791 he says:

"Arthur Campbell has been here. he is the enemy of P. Henry. he says the Yazoo bargain is like to drop with the consent of the purchasers. he explains it thus. they expected to pay for the lands in public paper at par, which they had bought at half a crown a pound. since the rise in the value of the public paper, they have gained as much on that as they would have done by investing it in the Yazoo lands; perhaps more, as it puts a large sum of specie at their command, which they can turn to better account. they are, therefore, likely to acquiesce under the determination of the government of Georgia to consider the contract as forfeited by non-payment."[1]

Patrick Henry probably made substantial gains by his purchases of Georgia paper. About the time of the sale Georgia certificates were worth between two and three shillings in the pound,[2] and the letters of Scott, who went to Georgia early in 1790 to buy depreciated paper for the company, indicate that he obtained many, if not all, of the company's certificates at this price. A large part of the certificates thus purchased rose greatly in value after the assumption of State debts, and Patrick Henry and others of the company were enabled to dispose of their paper at a considerable profit.[3] Hon. William Wirt Henry has shown that there is no ground for the insinuation that this transaction influenced Patrick Henry's political opinions.[4]

THE TENNESSEE COMPANY.

The history of the Tennessee Company centres about Zachariah Cox, one of the most energetic adventurers in the Southwest. Cox had occupied lands near the Muscle Shoals in 1785 and saw clearly the advantages of a commercial settlement in that region, commanding, as it would, the trade of the Tennessee, and leading by easy portages through the

[1] April 24. Jefferson's "Writings," iii., 251; State Department MSS. See also his letter to Gouverneur Morris, "Writings," iii., 198.

[2] Protest of the minority of the Georgia legislature, *Georgia Gazette*, January 7, 1790; "Massachusetts Historical Collections," sixth series, iv., 421; Charlton's "Life of James Jackson" (Augusta, 1809), part I., vi.–vii.

[3] Henry MSS.; "Public Lands," i., 168, 169, 177.

[4] *Historical Magazine*, xii., 368–372.

Tombigbee to the Gulf. After the grant of 1789 had been secured, he and his associates, including John Sevier and many prominent men in eastern Tennessee, announced that they would embark January 10, 1791, for the purpose of forming a settlement near the Muscle Shoals on the southern bend of the Tennessee. Liberal inducements were offered, and in spite of warnings from the President and Governor Blount, eighteen men joined in erecting a block-house and other works of defence, but were forced to withdraw by the arrival of a party of Cherokees. Two small payments were made to Georgia and the remainder of the purchase money refused, just as in the case of the other companies.[1]

Cox was not easily disheartened. Further preparations failing to secure a settlement, his company came forward again as purchasers in 1795, and in the speculations of that year Cox took an active part. We afterward find him petitioning Congress for a loan to enable him to carry on trade with the Indians, opposed by troops when attempting a settlement, arrested at Natchez for opening a land office, escaping at night only to be recaptured at Nashville, planning canals to connect the Tennessee with the Tombigbee, and finally ending his restless life at New Orleans.[2]

THE SECOND YAZOO SALE.

The failure of the ventures of 1789 did not diminish the fever of speculation. While the authors of the "Pine Barren Speculation" were making enormous profits in the south of Georgia,[3] the legislature was importuned for a second

[1] "Indian Affairs," i., 112, 113, 115, 126, 172, 173; Haywood's "Civil and Political History of Tennessee," 159, 252, 255, 256; Putnam's "History of Middle Tennessee," 331, 332, 346; Ramsey's "Annals of Tennessee," 549–551; Washington's "Writings" (ed. Sparks), x., 196; "Papers Relating to a Settlement by Z. Cox," 1797.

[2] Annals of Congress, March 30, 1796; Haywood's "Tennessee," 455, 456; Claiborne's "Mississippi," i., 156, 157; "State Papers, Miscellaneous," i., 358, 361; "Public Lands," i., 244 (reservation for canals); Cox's "Estimate of Commercial Advantages by Way of the Mississippi and Mobile Rivers, to the Western Country." Nashville, 1799.

[3] See Chappell's "Miscellanies of Georgia," ii., 43–55.

grant of western territory. The first proposal came November 12, 1794, from John Wereat, agent for Albert Gallatin, A. J. Dallas, and Jared Ingersoll, who offered to buy the tract formerly given the South Carolina Company at the price which that company was to have paid. In this Wereat probably exceeded his instructions; certainly his principals disclaimed all further connection with his proposals.[1] Wereat's offer was small, however, compared with those which soon followed. Petitions were received from four companies asking for a grant of the greater part of the State's western territory for the sum of $500,000. These were referred to a committee, which on the 3d of December brought in a bill embodying the companies' proposals. Another proposition from Wereat was rejected,[2] as were all other amendments, and the bill went to Governor Matthews for signature. In spite of a strong appeal from those interested, the bill was vetoed. The Governor did not consider the bill unconstitutional; he doubted whether the time had arrived for disposing of the territory, and thought that, if it was the proper time, the principle of monopoly was bad, the price was too low, and sufficient reservations had not been made for the State and its citizens. A bill framed to meet these objections was then introduced. Again Wereat appeared and outbid the other companies, and again his offers were refused.[3] The legislature hurried the bill through, the

[1] "A Vindication of the Rights of the New England Mississippi Land Company, by the Agents of Said Company" (Washington, 1804), 63, quoting Journal of the Georgia House, p. 10. All the original records of the proceedings in the legislature have disappeared.

[2] *Ibid.*, 65, 66. He was associated with William Few, General Twiggs, and others, in the Georgia Union Company.

[3] The refusal of Wereat's offers has generally been considered a crowning proof of the corruption of the legislature. It should, however, be said that his security was thought insufficient, and the whole plan regarded as really a scheme on his part to pay down a fraction of a cent an acre for the chance to sell at a profit in the course of a year. The fact that each of his later proposals was made after the arrangements of the others were well advanced gives color to the suspicion that his real design was to force the other companies to buy him off. Compare the "New England Vindication," 66, 71, and "State of Facts. Shewing the Right of Certain Companies to the Lands lately Purchased by Them from the State of Georgia" (United States, 1795), 32 ff.

Governor yielded, and the bill became a law January 7, 1795.[1]

By this act the greater part of what is now Alabama and Mississippi was sold for a cent and a half an acre to four sets of purchasers. The lands of the Upper Mississippi Company lay in the extreme northwest, stretching southward twenty-five miles from the State boundary line and eastward from the Mississippi to the Tennessee. The price was $35,000. For the sum of $60,000 the Tennessee Company obtained almost the same territory as in 1789. The southwest was the region of the Georgia Mississippi Company, which paid $155,000 for a grant bounded by the Mississippi, the Tombigbee, and latitudes 32° 40′ and 31° 18′. The largest share fell to the Georgia Company. Its seventeen million acres reached from the Mississippi to the Alabama, with 34° as the northern limit and 32° 40′ as the southern, except east of the Tombigbee, where it dipped to 31°. For this they were to pay $250,000. In each case a part of the purchase money (generally one-fifth) was to be deposited before the passage of the act. Payment of the remainder was required before November 1, 1795, and was to be secured by a mortgage on the land. Two million acres were reserved for other citizens of Georgia. Their subscriptions entitled them to membership in one or other of the companies, and their payments counted as part of the companies' purchase money. The State gave no guarantee against other claims, and was not to be responsible for peace with the Indians. After the completion of certain negotiations south of the Oconee the companies could apply for the concurrence of the United States in extinguishing the Indian title to their lands, and within five years after this extinguishment must form settlements, a provision which indicates the speculative character of the transaction. The

[1] "State of Facts," 51–64; "Public Lands," i., 144, 156, 157; Stevens's "History of Georgia," ii., 467 ff. Governor Matthews's conduct in signing the bill has been the subject of some discussion. It has generally been thought due to weakness rather than to corruption. See White's "Yazoo Fraud" (1852), 19; White's "Statistics of Georgia," 50; Chappell's "Miscellanies," ii., 87; Hodgson's "Cradle of the Confederacy," 88.

lands were declared free from taxation until their inhabitants should be represented in the legislature. Sale to any foreign power was prohibited.[1]

One of the noticeable features of the speculation is the number of eminent men who were engaged in it. James Gunn, the leading member of the Georgia Company, represented Georgia in the United States Senate. Matthew McAllister, his associate, was federal attorney for the Georgia district. Wade Hampton, grantee in two companies, was afterward a member of Congress and a general in the war of 1812, and at his death was supposed to be the wealthiest planter in the United States.[2] Other Congressmen were Robert Goodloe Harper and Thomas P. Carnes.[3] Nathaniel Pendleton, a federal judge, and William Stith, one of the judges of the Superior Courts of Georgia, were implicated.[4] Tennessee was represented by William Blount and John Sevier. Robert Morris was concerned.[5] James Wilson, of the Supreme Court of the United States, held shares to the amount of at least one million acres, and, it is asserted, was influential in securing the grant.[6]

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[1] Act in "Public Lands," i., 152; "Indian Affairs," i., 552; Watkins's "Digest," 557.

[2] For an attempt to extenuate his conduct in the matter, see the *Charleston City Gazette*, May, 1810, and compare his letter in "Public Lands," i., 197. Further mention of his connection with the lands in Thomas's "Recollections of the Last Sixty-five Years," i., 60; Gallatin's "Writings," i., 178.

[3] See lists of the shareholders, "Public Lands," i., 141, 143, 220–246. For Harper, see also his speech in the House, Annals of Congress, March 20, 1798.

[4] Hamilton's "Works" (ed. Lodge), viii., 372; "State Papers, Finance," iii., 282; "Public Lands," i., 148; Chappell's "Miscellanies," ii., 95.

[5] "Account of the Property of Robert Morris," 20, 54; Henry MSS.

[6] "Public Lands," i., 141, 237; ii., 884; White's "Statistics of Georgia," 50; Chappell, ii., 93, 94. The following letter throws some light on the history of the sale: "It would seem as if the fortunate adventurers, were gluted with Lands & wealth, we are told of other presents, tho' to a greater Amount of Lands—sold for 12,000 & 13,000 dollars clear profit,—so much given away.

"There were immense Sums sent there for Speculation we hear of one Gent^{n} buying up 4 or 5 Million of Acres, & of a few others a million each. . . . Gunn, Pendleton & Cox, (all with money of their own) with a few associates, have done the business Judge Wilson & others the money." Francis Watkins to Patrick Henry, March 7, 1795, Henry MSS.

THE RESCINDING ACT OF 1796.

The announcement of the sale produced great indignation and excitement throughout the State. It was felt that the legislature had given away a quantity of the public property sufficient, if properly administered, to yield a large sum to the State and furnish lands in abundance to all the citizens. Many of the purchasers were notorious speculators, many were residents of other States. Worse than all, many were members of the legislature which made the sale. "A more flagrant case of wholesale legislative corruption had never been known."[1] With but one exception, every member who voted for the act was a shareholder in one or more of the companies.[2] "Georgia became a perilous residence for all concerned in the speculation." Gunn was in several places burned in effigy. Threats of violence were frequent. Even before the bill was signed Governor Matthews had received a remonstrance from William H. Crawford and other citizens of Columbia County. Now came a succession of newspaper attacks, of petitions, of presentments of grand juries.[3]

After the adjournment of the "Yazoo Legislature," the first representative body to meet was the constitutional convention which came together in May, 1795. In consequence of the strong popular feeling that this body ought to abrogate the sale, many memorials were sent in. The convention, however, had been elected at the same time with the preceding legislature and was dominated by the same interests. Influenced by this and possibly doubting its power to take any action, the convention merely ordered "that such petitions be preserved by the Secretary, and laid before the next Legislature at their ensuing session," adding

[1] Adams's "John Randolph," 23.

[2] Compare the lists of shareholders with the votes in the legislature. "Public Lands," i., 141, 144; or Bioren and Duane's "Laws of the United States," i., 533–541. See also the affidavits in "Public Lands," i., 144–149.

[3] *Philadelphia Aurora*, March 30, 1795, and other newspapers of the time; White's "Yazoo Fraud," 21; White's "Statistics," 50, 51; Stevens, ii., 478–480; Chappell, ii., 114, 119–121; Gilmer's "Sketches of Some of the First Settlers of Upper Georgia," 196.

that this was "a subject of importance well meriting legislative deliberation."[1]

When the new legislature met, early in January, 1796, it was with the avowed purpose of repealing the obnoxious act. James Jackson had resigned his seat in the United States Senate and gone home to become a candidate for the Georgia House. As leader of the "Anti-Yazoo" party he had published a series of letters to the people, in which he attacked the constitutionality and policy of the sale.[2] Opposition to the sale had been the test in the elections, and on all sides "Anti-Yazoo" men had been chosen. On the 15th of January, the House appointed a committee of nine, with Jackson as chairman, to examine and report concerning the validity of the grant. A week later the committee reported a bill, together with proofs of corruption which were ordered to be entered in the journal of the House. February 13, the bill became a law.[3]

The rescinding act is an interesting document. It sets forth that the act of 1795 was in direct contravention of that part of the State constitution which empowered the legislature to make all laws and ordinances which they should deem necessary and proper for the good of the State, which should not be repugnant to the constitution.[4] The good of the State had been disregarded by the waste of public resources and by the creation of great monopolies inimical to republican government. The constitution had been violated by not organizing the territory into counties with representation in the legislature and liability to taxation.[5] Power to alienate the public land had not been delegated by the constitution, and could be exercised only by the people

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[1] "Journal of the Convention," 31. At least fifteen of the fifty-five members of the convention were shareholders in the purchase.

[2] "The Letters of Sicilius, to the Citizens of the State of Georgia, on the Constitutionality, the Policy, and the Legality of the Late Sale of Western Lands, in the State of Georgia." August, 1795.

[3] Newspapers of the time; "Public Lands," i., 144–149; Stevens, ii., 485–487.

[4] Article I., section 16.

[5] Article I., section 17, giving the legislature power to lay out new counties and assign them representatives.

through their representatives in convention. That the grant had been fraudulently obtained was proved by the evidence which the committee had collected. "Were the powers of one legislature over another to be questioned," the authority of this legislature had been strengthened by the action of the late convention in referring the matter to it and by the absence of a court, "if the dignity of the State would permit her entering one, for the trial of fraud and collusion of individuals, or to contest her sovereignty with them, whereby the remedy for so notorious an injury could be obtained." So much, fully three-fourths, is preamble. Although it shows unmistakable marks of Jackson's hand, it indicates the popular sentiment of the State and serves as an illustration of certain widespread political opinions. In the controversy which followed the repeal, the advocates of the act drew their arguments chiefly from this preamble. The law goes on to declare the sale of 1795 null and void and to provide for the destruction of all the public records relating to it and for the return of the purchase money. To prevent future frauds on individuals, the Governor was required to promulgate the law throughout the United States.[1]

Two days later the act of 1795 was publicly and solemnly burned by the State authorities, tradition says by means of "fire from heaven" drawn down by a sun-glass.[2] Not satisfied with this solemn destruction of documents, perhaps feeling some uncertainty as to the finality of the rescinding act, the constitutional convention of 1798 made the act a part of the constitution. The territory of the State was declared to be alienable to individuals or companies only by the consent of the free citizens, except where counties should first be laid off and Indian rights extinguished. By this section "the contemplated purchases of certain

[1] "Public Lands," i., 156; Watkins's "Digest," 557; Marbury and Crawford's "Digest," 573.

[2] Thomas's "Reminiscences of the Last Sixty-five Years," i., 59; newspapers of the time; Stevens, ii., 491–494; White's "Yazoo Fraud," 46; Marbury and Crawford's "Digest," 581.

companies of a considerable portion" of the public lands became "constitutionally void," and the next legislature was directed to make provision for repayment.[1]

A new method of granting land was soon adopted. The public domain was surveyed and divided into small lots of uniform size, which were marked, numbered, and mapped. The certificates were then returned to the Surveyor-General and thrown into a lottery wheel, from which they were distributed by lot to each citizen.[2]

THE NEW PURCHASERS.

The legislators of Georgia had done their best to undo the work of 1795, but the speculators were not to be so easily defeated. Many indeed took advantage of subsequent legislation to receive back their money,[3] but most of the others made haste to sell their lands outside of the State. Pamphlets setting forth the advantages of the lands and the title of the companies were prepared and circulated extensively through the Middle and Eastern States.[4] The territory of the Upper Mississippi Company was sold in South Carolina.[5] Agents of the other companies were sent to New England and opened an office in Boston, where they found a spirit of speculation highly favorable to their dealings. People flocked to them, excited by the higher prices asked each day. Purchases and sales followed fast. Buyers received only a general warranty; payment

[1] Article I., sections 23 and 24. Glascock and Gunn refused to sign the new constitution on account of these provisions. See Governor Jackson's message, January 10, 1799, in the *Georgia Gazette* of the 14th of February.

[2] The first land lottery was in 1803. See Clayton's "Compilation of the Laws of Georgia," 100; Chappell, ii., 25–27; Harden's "Troup," 188–193; Melish's "Travels," i., 41; Sumner's "Jackson," 176.

[3] Marbury and Crawford's "Digest," 581, 583; "Laws of 1812," 163; Harden's "Troup," 50. List of those repaid in "Public Lands," i., 150.

[4] "State of Facts. Shewing the Right of Certain Companies to the Lands lately Purchased by Them from the State of Georgia." United States, 1795.

"Grant to the Georgia Mississippi Company, the Constitution Thereof, and Extracts Relative to the Situation, Soil, Climate, and Navigation of the Western Territory of the State of Georgia." Augusta, 1795.

[5] "Public Lands," i., 218, 233, 252.

was partly in cash, chiefly in notes which the agents quickly disposed of. By February 24, 1796, when the probability of a repeal of the sale was announced in the Boston newspapers, large purchases had been made from the Georgia and Tennessee companies, while the Georgia Mississippi Company had on the very day of the passage of the rescinding act made a conveyance of eleven million acres for ten cents an acre. Many men of prominence became involved—Samuel Dexter, James Sullivan, H. G. Otis, Perez Morton, Gideon Granger. "On this ocean of speculation great multitudes of sober, industrious people launched the earnings of their whole lives." "Every class of men, even watch-makers, hair-dressers, and mechanics of all descriptions, eagerly ran after this deception." Boston alone sank over two million dollars.[1]

When the rescinding act was announced in Boston (March 12) it became the principal local topic of conversation and gave rise to a newspaper and pamphlet controversy which continued several years.[2] Undiscouraged, the purchasers organized and prepared to enforce their claims. Still the determined opposition of Georgia and the destruction of the

[1] La Rochefoucault's "Travels" (London, 1799), ii., 175–177; Dwight's "Travels," i., 221; "Public Lands," i., 210, 220–246; ii., 885; *Columbian Centinel*, February 24, 1796; "Report on the New England Mississippi Land Company," Senate Document No. 205, 23d Congress, first session.

[2] *Columbian Centinel*, *Independent Chronicle*, March, 1796.

Bishop, "Georgia Speculation Unveiled." Hartford, 1797.

Morse, "A Description of the Soil, Productions, Commercial, Agricultural, and Local Advantages of the Georgia Western Territory." Reprinted from the "American Gazeteer." Boston, 1797.

Anderson and Hobby, "The Contract for the Purchase of Western Territory, Made with the Legislature of Georgia, in the Year 1795; Considered with a Reference to the Subsequent Attempts of the State, to Impair its Obligation." Augusta, 1799.

Harper, "The Case of the Georgia Sales on the Mississippi Considered: with a Reference to Law Authorities and Public Acts; with an Appendix, etc." Philadelphia, 1799.

"A Vindication of the Rights of the New England Mississippi Land Company, by the Agents of Said Company." Washington, 1804.

"A Few Facts in Reply to the Agents of the Mississippi Land Company." 1804.

records of the sale made recovery difficult, and the lack of any return from the large investment had produced much distress,[1] when the transfer to the United States of Georgia's rights to the territory gave Congress power to compromise.

THE GEORGIA CESSION.

A copy of the act of 1795, sent to the President just after its passage, had been transmitted to Congress as an object of magnitude which might deeply affect the peace and welfare of the country. The message was considered at length in both Houses, but two bills brought in to protect the Indians against intruders failed.[2] A strict regulation of intercourse with the Indians was obtained from the next Congress,[3] and a report of the Attorney-General led to a long discussion over Georgia's title, ending, in 1798, in the passage of a law which authorized the appointment of commissioners to adjust the conflicting claims of the two governments and receive proposals of cession.[4] To this Georgia assented, appointing Governor Milledge and Senators Jackson and Baldwin as her commissioners,[5] while the United States was represented by Madison, Gallatin, and Levi Lincoln, members of the new Cabinet.[6] In April, 1802, articles of cession were agreed upon and ratified as reported.[7] Georgia ceded

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[1] Fisher Ames's "Works," i., 215; La Rochefoucault, ii., 176; Dwight, i., 221.

[2] "Indian Affairs," i., 551, 558; Annals of Congress, February, 1795; Fisher Ames's "Works," i., 168; Washington's "Writings" (ed. Sparks), xi., 18; J. C. Hamilton's "History of the Republic," vi., 190. It was alleged that Gunn's decisive vote for the Jay treaty was obtained by a promise that the sale should not be investigated. *Boston Chronicle*, February 29, March 7, 1796; *Philadelphia Aurora*, March 8, 1796; Randolph's speech in the House, Annals of Congress, January 31, 1805.

[3] "Statutes at Large," i., 469.

[4] *Ibid.*, i., 549; "Public Lands," i., 34, 71, 79.

[5] "Georgia Laws of 1800," 16.

[6] Instead of Timothy Pickering, Oliver Wolcott, and Samuel Sitgreaves, whom Adams had appointed. "Public Lands," i., 92; Executive Journal of the Senate, January 5, 1802.

[7] "Public Lands," i., 125; "Georgia Laws, Extra Session of 1802," 3; Donaldson's "Public Domain," 80.

to the United States all her rights west of the Chattahoochee in return for a payment of $1,250,000 and a pledge to extinguish all Indian titles in Georgia. The new territory was in due time to be admitted as a State, and claims under Great Britain, Spain, and the Bourbon act of 1785 were confirmed in the case of actual settlers prior to the Spanish evacuation. For these liberal terms Georgia consented to the reservation of five million acres to settle other claims.

THE YAZOO CLAIMS.

By a law of 1800[1] the federal commissioners were also directed to inquire into and report upon the claims of individuals in the territory south of Tennessee, a task of difficulty and importance. Their report contains, besides documents on earlier British, Spanish, and Georgia grants, a mass of material on the Yazoo claims, as the claims based on the act of 1795 had come to be called. In the opinion of the commissioners the claimants' title could not be supported, yet, in view of the equitable considerations which most of them could plead and the great amount of litigation which would arise from the confusion of claims, a reasonable accommodation was declared expedient. Rejecting the purchasers' propositions to compromise at twenty-five cents an acre—or about $8,500,000, with interest from 1806—the commissioners recommended as the basis of settlement either the remnant of the five million acres reserved by the act of cession (after satisfying settlers' claims), or the option of receiving $2,500,000 in interest-bearing certificates or $5,000,000 in certificates without interest, to be shared among the companies in proportion to the purchase-money.[2]

This report reached the House, February 16, 1803, and after some modification became part of the act of March 3, the basis of the land system of the Mississippi Territory. By this the residue of the reserved five million acres was ap-

[1] "Statutes at Large," ii., 70.

[2] "Public Lands," i., 132–158.

propriated to the quieting of such of the Yazoo claims as Congress might see fit to provide for. No claims should be satisfied unless proper evidence was exhibited before a fixed date, and the commissioners were empowered to receive further propositions of compromise. In the course of the debate on the report the motion prevailed to hear the claimants of 1795 before the bar of the House. This their agents declined on the ground of insufficient preparation, but they agreed to accept, with certain amendments, the proposed terms of settlement. Although the point was often overlooked in later discussions, the act expressly disclaimed recognizing or in any way affecting the claimants' demands. It merely made possible a future agreement, and hence the debates upon it are of slight importance.[1]

JOHN RANDOLPH'S RESOLUTIONS.

When the real question of compensating the Yazoo purchasers came up, the claims met the determined resistance of John Randolph. Randolph had been in Georgia during the excitement which followed the grant of 1795, and had there become imbued with that spirit of violent opposition to the sale, and everything connected with it, which made him an "Anti-Yazoo" man for the rest of his life.[2] Then, too, he was a strict adherent of the doctrines of the Virginia school, and a denial of the validity of the rescinding act meant a denial of his most cherished theories of government. As for the claimants, they were to his mind as guilty as if they had been partners in the original fraud. Compromise was also odious because advocated by Madison, whose influence in the House, all the more dangerous in that he was a member of the Cabinet, threatened Randolph's leadership. "Least Virginian of all the prominent Virginians," Madison, in his support of the claims, was associated with the northern Democrats, and for the northern Democrats Randolph felt great contempt. In his opinion they cared

[1] "Statutes at Large," ii., 229; Annals of Congress, February, 1803; "Public Lands," i., 159.

[2] Garland's "Randolph," i., 67; Adams's "Randolph," 23.

nothing for the principles of true republicanism; they were spoilsmen, eager only for the loaves and fishes. In this he was not entirely wrong; certainly the Democrats of 1798 and the Democrats of 1804 could not long remain united, and the Yazoo question occasioned the first split.[1]

Early in 1804 there was introduced into the House and referred to the Committee of the Whole a bill authorizing the commissioners to settle the Yazoo claims according to what they should deem the best interests of the United States. February 20, Randolph, in order "to place the subject in such a point of light that every eye, however dim, might see distinctly its true merits," offered a set of eight resolutions. They declared that the Georgia legislature had never been empowered to alienate territory "but in a rightful manner, and for the public good"; that when the governors of any people had exercised their authority to the public detriment, it was the inalienable right of the people to revoke the authority thus abused; that the House had it in evidence that the Yazoo sale was corrupt; that the sale had been declared void by a subsequent legislature, acting within its undoubted rights, and violating no constitutional provision; that the claims had been recognized by no act of the United States; and therefore that no part of the reserved five million acres should be applied to satisfy any claims under the pretended act of 1795.[2]

"These resolutions," it has been well said, "covered the whole ground; they swept statements of fact, principles of law, theories of the Constitution, considerations of equity, like a flock of sheep into one fold to be sheared."[3] Both bill and resolutions came up in the Committee of the Whole on the 7th of March. After the failure of attempts to give Congress power to revise the commissioners' findings, Randolph

[1] Compare Henry Adams's "History of the United States," ii., 210, a work from which I have derived much assistance in studying the political history of the Yazoo claims.

[2] For this, as for most that follows, see the Annals of Congress under the various dates.

[3] Adams's "Randolph," 107.

moved an amendment to the bill, in order to test the question, and was defeated, 46 to 57. Varnum's attempt to postpone discussion of the resolutions then opened the debate. On the side of the northern Democrats there was an evident endeavor to suppress the resolutions. They had, they said, no right to consider them; any action upon them would be an interference with Georgia's sovereignty. Macon replied that such objections should have been made before the resolutions were referred to the committee, while Randolph expressed his contempt for the crocodile tears shed in the cause of State sovereignty, a principle which would certainly be violated by recognizing the claims. They need not, he threatened, try to get rid of the question by postponement; he meant to have the public learn, then or again, the sense of the House on the resolutions.[1]

Forced to rise, the committee obtained almost unanimous leave to sit again, and three days later the resolutions were taken up seriatim. A debate of some length followed, in which Rodney, John Randolph, and Thomas M. Randolph were opposed by Elliott and Lyon. Finally by a close vote the resolutions were postponed.[2] Randolph had, however, succeeded in preventing any action on the subject, and it disappeared for the remainder of the session.

"A YAZOO CABINET."

Early in the next session the claims came up re-enforced by a new set of memorials and petitions. A House bill which extended the time for recording evidences of title failed in the Senate, but the Committee of Claims made a favorable report on the petitions, recommending the appointment of three commissioners whose terms of compromise should be final.[3] January the 29th a resolution to this effect

[1] "A whining, coaxing, threatening, and personally abusive speech," it was called by Dr. Cutler. "Life, Journals, and Correspondence," ii., 169.

[2] At first Randolph and his supporters, by a majority of one, defeated a motion to postpone the first resolution. After the others had been deferred they secured the postponement of this also; his opponents now resisted the postponement of the first resolution, evidently desiring to suppress it.

[3] "Public Lands," i., 215.

was reported from the Committee of the Whole, and after ineffectual attempts to adjourn, the debate began.

Randolph set the tune in a long speech, a "fire and brimstone speech," Dr. Cutler called it.[1] Postmaster-General Granger had appeared as one of the agents of the New England Mississippi Company, an organization composed of purchasers from the Georgia Mississippi Company. This impropriety on the part of Granger drew Randolph into a vehement invective against him:

"His gigantic grasp embraces with one hand the shores of Lake Erie,[2] and stretches with the other to the Bay of Mobile. Millions of acres are easily digested by such stomachs. . . They buy and sell corruption in the gross, and a few millions, more or less, is hardly felt in the account. . . . When I see the agency that has been employed on this occasion, I must own that it fills me with apprehension and alarm. . . . Are heads of Executive Departments of the Government to be brought into this House, with all the influence and patronage attached to them, to extort from us, now, what was refused at the last session of Congress?"

Then, turning on the northern Democrats, he said:

"What is the spirit against which we now struggle, and which we have vainly endeavored to stifle? A monster generated by fraud, nursed in corruption, that in grim silence awaits its prey. It is the spirit of Federalism! That spirit which considers the many as made only for the few, which sees in Government nothing but a job, which is never so true to itself as when false to the nation! When I behold a certain party supporting and clinging to such a measure, almost to a man, I see only men faithful to their own principles; pursuing with steady step and untired zeal, the uniform tenor of their political life. But when I see associated with them, in firm compact, others who once rallied under the standard of opposite principles, I am filled with apprehension and concern. . . . If Congress shall determine to sanction this fraud upon the public, I trust in God we shall hear no more of the crimes and follies of the former administration. For one, I promise that my lips upon this subject shall be closed in eternal silence. I should disdain to prate about the petty larcenies of our predecessors after having given my sanction to this atrocious public robbery."

His confidence in the sufficiency of the legal argument had evidently weakened, for he said:

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[1] "Life," etc., ii., 182.

[2] In allusion to Granger's lands in the Western Reserve.

"The present case presents a monstrous anomaly, to which the ordinary and narrow maxims of municipal jurisprudence ought not, and cannot be applied. It is from great first principles, to which the patriots of Georgia so gloriously appealed, that we must look for aid in such extremity. . . . Attorneys and judges do not decide the fate of empires."

On the 31st the commissioners and claimants were defended by John G. Jackson, Madison's brother-in-law, in a long speech which was thought to show Madison's hand.[1] Randolph broke forth again, citing a supposed attempt of Granger to secure a vote for the claims by an offer of mail contracts. Granger wrote at once demanding an official investigation, and when this was not granted addressed a letter to the Speaker in which he explained at length his relations with the New England Company and denied solemnly any use of improper influence. Lyon of Kentucky, one of the Democrats who had broken away from Randolph, held several mail contracts and thus felt himself attacked over Granger's shoulders. He now rose to defend the Postmaster-General in a speech full of personal abuse, calling Randolph a jackal and a madman with the face of a monkey.[2]

So the debate dragged on, to the enjoyment of the Federalists, until February the 2d, when a vote was reached and the resolution of the committee adopted, 63 to 58. Varnum and Eustis voted with the majority. Randolph carried but two votes in New England, the Middle States divided, and in the South eighteen votes in favor of the committee's resolution indicated a considerable revolt from his leadership. Nevertheless, he was again successful in defeating all attempts to compromise the claims.

FAILURE OF THE CLAIMS IN CONGRESS.

In the next Congress the claimants applied to the Senate through Sumter of South Carolina and the reluctant John Quincy Adams, and after a long struggle in committee a bill was brought in which directed that after the execution of

[1] Adams's "History of the United States," ii., 215.

[2] On the debate compare Cutler's "Life," etc., ii., 182, 186 ff.

proper releases on the part of the claimants Congress should provide by law for sufficient indemnification.[1] After the death of its strongest opponent, James Jackson, the bill passed by a vote of 19 to 11. When it reached the House a motion to reject prevailed, 62 to 54, by a division which showed only 10 southern votes in favor of the bill. In the debate Randolph continued to magnify the importance of the subject. "This bill," he said, "may be called the Omega, the last letter of the political alphabet; but with me, it is the Alpha; it is the head of the divisions among the republican party; it is the secret and covert cause of the whole. This is the subject which has been shoved off from day to day, merely that we might get something from the other House, where its friends were more numerous. Yes, a union has been formed between Cape Ann and Marblehead, and the Rio del Norte, a union of the East and the West, . . . and the nation is sold. . . . The whole executive government has had a bias to the Yazoo interest ever since I have had a seat here. This is the original sin, which has created all the mischiefs which gentlemen pretend to throw on the impressment of our seamen, and God knows what; this is the cause of those mischiefs which existed years ago."

In December, 1807, the Democratic legislature of Massachusetts passed a resolution which directed the Governor to petition Congress with regard to the Yazoo claims, requesting an impartial investigation and an equitable compromise.[2] When Bacon presented Governor Sullivan's memorial to the House and moved that it be referred, an angry debate arose. The tone of the Georgia members was particularly violent. Bibb moved immediate rejection, while Troup, famous as Governor of the State at the time of the Cherokee troubles, was inclined to throw the petition under the table. Randolph's plea for harmonious rejection in order to prevent another schism in the party was met by Crowninshield's

[1] "Public Lands," i., 252; J. Q. Adams's "Diary," i., 381, 389–392, 404, 405, 408, 417, 418.

[2] Amory's "Life of James Sullivan," ii., 212.

denial of the existence of such a schism and Smilie's retort that there had been no schism until Randolph's defection in the session of 1805–1806. The member's sense of fairness prevailed, and the petition was referred, yeas 71, nays 37, only 6 northern members voting in the negative. The petition, however, quietly disappeared, along with one from sundry citizens of New York,[1] and when Joseph Story asked leave to appear before the House in behalf of the New England Mississippi Company, his request was refused by a large majority.[2] Another memorial of the New England Company was brought up in December, 1809, and by a close vote referred to the Committee of Claims, but in April, 1810, the committee was discharged by vote of the House from further consideration of the subject.[3]

In this long course of opposition to the Yazoo claims Randolph's chief political motive appears to have been hatred of Madison and the northern Democrats. He was provoked by the defection of the northern Democrats in 1804,[4] while they were further alienated by his attacks at the next session. It became a common saying at Washington that there was no being in nature that a Virginian hated so much as a New England Democrat.[5] Although Madison was at first no more committed to the policy of compromise than was Gallatin, Randolph's firm friend, yet by reason of his own private utterances[6] and Jackson's public defence of the claims he came to be considered a more decided advocate. The question soon passed the stage of rational argument and became a struggle for power between Madi-

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[1] This also came up in the Senate. J. Q. Adams's "Diary," i., 513.

[2] February 12, 1808. Compare Lodge's "Cabot," 377.

[3] Story's "Story," i., 197; House Journal, April 9, 1810.

[4] Randolph considered the Yazoo question one of the principal causes of the failure of the impeachment of Judge Chase. Annals of Congress, March 29, 1806.

[5] Cutler's "Life," etc., ii., 189. An illustration of the feeling in Virginia against the claims is given in Tucker's "History of the United States," ii., 217.

[6] See the account of his conversation with Giles in J. Q. Adams's "Diary," i., 344.

son and Randolph.[1] Randolph, seconded by the *Philadelphia Aurora*, sought to brand Madison as a Yazoo man and thus destroy his influence among those with whom that term was a synonym for speculation and corruption. His aim became more manifest as the Presidential election of 1808 drew near. The old Democrats, he told Monroe when he pressed him to become a candidate for the Presidency, were determined not to have a Yazoo President if they could avoid it.[2] Even after the caucus had nominated Madison, Randolph and sixteen of his friends published a protest against the election of a man who had "forfeited his claim to public esteem by recommending a shameful bargain with the unprincipled speculators of the Yazoo companies, a dishonorable compact with fraud and corruption."[3] Such a policy could lead to no positive results. Randolph's resistance to the claims won him the public thanks of Georgia,[4] but his quarrelsome arrogance, nowhere else better exhibited, destroyed his political influence and left him the leader of a powerless faction persistent in its denunciation of Madison and Yazoo.[5]

FLETCHER *VS.* PECK.

The House might well discharge its committee; Chief Justice Marshall's decision had put an entirely new face on the matter. Little confident of securing justice at the hand of Congress, the claimants frequently requested that provision be made for a judicial determination.[6] This, they thought, required for its authorization a special act of legislation, since they were prevented by a law of 1807 from

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[1] Adams's "History of the United States," iii., 119. Compare the *Philadelphia Aurora*, November 11, 1805. On the undue prominence given the subject see G. W. Campbell's letter in the *Tennessee Gazette* of April 10, 1805.

[2] Randolph to Monroe, September 16, 1806. Adams's "Randolph," 203.

[3] *National Intelligencer*, March, 7, 1808; Hildreth, vi., 66.

[4] November 23, 1807. Clayton's "Compilation of the Laws of Georgia," 680; Harden's "Troup," 53; Miller's "Bench and Bar of Georgia," i., 363.

[5] Compare Randolph's speech in the House, March 13, 1806, in which he defines *quiddism*.

[6] "Public Lands," i., 203, 204, 205, 252, 253, 587.

entering upon the lands to try the title.[1] Forecasting the probable result of such a trial of the case, Randolph and his party preferred to keep the question on the old basis and shout "Yazoo" whenever the claims came up. Finally a feigned issue was arranged and a favorable decision obtained from the Circuit Court. In March, 1809, the case was argued in the Supreme Court of the United States by Luther Martin, John Quincy Adams, and Robert Goodloe Harper. A defect in the pleadings necessitated a reargument at the next term, when Adams's place was taken by Story, soon to decide similar cases upon the bench.[2]

March 16, 1810, Marshall rendered his opinion.[3] It affirmed the position taken by Alexander Hamilton as early of 1795,[4] namely, that the rescinding act impaired the obligation of contracts and was therefore contrary to the Constitution of the United States. A grant, whether public or

[1] "Statutes at Large," ii., 445. Compare Quincy's speech in the House, January 4, 1808.

[2] J. Q. Adams's "Diary," i., 543; Story's "Story," i., 195, 196; Goddard's "Luther Martin," 35.

[3] Fletcher *vs.* Peck, 6 Cranch, 87. On the reluctance of the court to decide the case see J. Q. Adams's "Diary," i., 546, and Justice Johnson's dissenting opinion.

[4] After referring to the clause of the Constitution which protects the obligation of contracts, Hamilton says: "Every grant from one to another, whether the grantor be a State or an individual, is virtually a contract that the grantee shall hold and enjoy the thing granted against the grantor, and his representatives." If then the title of the State was good when the grant was made, a revocation of the grant would be void, and "the courts of the United States, in cases within their jurisdiction, will be likely to pronounce it so." March 25, 1795, Morse's "Description of Georgia Western Territory," 24. Compare "Public Lands," ii., 882.

In the case of Derby *vs.* Blake in 1799, the Supreme Judicial Court of Massachusetts had decided against the validity of the rescinding act. Such is the statement of George Blake, one of the counsel, in "Public Lands.," ii., 886. The opinion of the court does not appear in the record of the case in the Supreme Judicial Court or among the papers of the Essex County Court of Common Pleas, from which it was appealed; probably there was no written opinion, as the case was decided at *nisi prius* and did not go up to the full bench on any exception. The suit concerned the validity of a promissory note given by William Judd and James A. Wells for a share in the grant of 1795. The case is cited in 2 Dane's Abridgment, 649, in regard to another and wholly incidental point.

private, is an executed contract. Where an act clothed with the requisite forms of a law is passed by a legislature acting within its constitutional powers, a court cannot sustain in a suit between individuals the allegation of fraud in its passage. The people can act only through their agents, and when, as here, the agents act within the powers conferred, their acts are the acts of the people. Even if a court had examined the title and set it aside on account of fraud, it could not make innocent third parties suffer by the decision.

Such, very briefly, is the substance of one of the most important constitutional decisions in our history, important since the doctrine here laid down and afterward extended has largely determined the relation of the States to the corporations which they have created. It seems clear that Fletcher *vs.* Peck, rather than the more famous Dartmouth College case, lies at the root of the later interpretation of the law of public contracts. The decisive step was taken when a provision designed to guard private contracts was extended to those of a public nature. If a grant of lands is a contract, such by an easy transition is a grant of exemption from taxation,[1] and such again is a charter of incorporation.[2] This view is strengthened by the language of the later decisions. New Jersey *vs.* Wilson is distinctly based on the Yazoo case. Webster in his celebrated argument in the Dartmouth College case cites with assurance these cases and Terrett *vs.* Taylor,[3] in which Story had reaffirmed the principle of 1810. While Marshall's opinion in the Dartmouth College case rests on other grounds, nothing could be stronger on this point than Justice Washington's assertion that "if a doubt could exist that a grant is a contract, the point was decided in the case of Fletcher *vs.* Peck," or than Story's reasoning, when he says, after citing Fletcher *vs.* Peck: "It determines, in the most unequivocal manner, that the grant of a State is a contract, within the clause of

[1] New Jersey *vs.* Wilson (1812), 7 Cranch, 164.

[2] Dartmouth College *vs.* Woodward (1819), 4 Wheaton, 518.

[3] 9 Cranch, 43.

the constitution now in question, and that it implies a contract not to reassume the rights granted; *a fortiori*, the doctrine applies to a charter or grant from the king."

Carried to its logical conclusion, the principle of the inviolability of State contracts must come into conflict with the principle of eminent domain, a consequence clearly foreseen by Justice Johnson in dissenting from the opinion in Fletcher *vs.* Peck. To limit the obligation of contracts by the theory of eminent domain, says Henry Adams, "is merely John Randolph's proposition under another form; it is state sovereignty, to which we must come at last."[1]

THE COMPROMISE OF 1814.

Marshall's decision was not rendered without a protest from the champions of States' rights. April 17, 1810, Randolph attempted in vain to get the sense of the House on the subject, evidently with a view to resisting the decision. He desired some action, fearing that "an abandonment on the part of the House of an examination of that question, particularly at the time when it was abandoned, would wear the appearance abroad of acquiescence in that judicial decision on their part." Troup said that it was "a decision which the mind of every man attached to Republican principles must revolt at." More of such assertion was heard in 1813, when the House laid on the table a Senate proposal of compromise.[2]

Early in 1814 the New England Mississippi Company submitted a new memorial,[3] and again a bill for settling the claims passed the Senate by a large majority. The advocates of compromise now rested their arguments, not so much upon the equity of such a measure, as upon the litigation which must otherwise ensue, delaying the settlement of the territory and working hardship to many of its occupants. The passage of the bill by the House, finally

[1] "John Randolph," 109. See also Alexander Johnston on the Yazoo Frauds in Lalor's "Cyclopædia of Political Science," iii., 1127–1130.

[2] See especially Troup's speech, January 20, 1813.

[3] "Public Lands," ii., 877.

accomplished by a vote of 84 to 76, was facilitated by the absence of Randolph, who had been defeated at the last election, and the disposition to conciliate disaffected New England.[1] The act of March 31, 1814,[2] appropriated $5,000,000 from the proceeds of land sales in the territory, to be shared among the companies in the following proportion: Upper Mississippi Company, $350,000; Tennessee Company, $600,000; Georgia Mississippi Company, $1,550,000; Georgia Company, $2,250,000; citizens' rights, including such shares as had accrued to the United States through the operation of law, $250,000. Commissioners were appointed to decide all cases finally and after proper releases had been executed, to divide these amounts *pro rata* among the claimants. Nothing was to be paid to those who had voluntarily surrendered the evidences of their claims or received back any of the purchase money, and all who rejected these terms were forever barred from pursuing their claims.

The commissioners designated by the act, Monroe, Dallas, and Rush, were on petition relieved, and Thomas Swann, Francis S. Key, and John Law were appointed in their stead.[3] Their tedious task was begun in 1815, and three years later the Treasury reported a final settlement which involved the payment of $4,282,151.12.[4] Owing to the

[1] Hildreth, vi., 464; Henry Adams, vii., 402. On the passage of the bill compare Webster's "Private Correspondence," i., 244.

[2] "Statutes at Large," iii., 116. Later amendments, *ibid.*, iii., 192, 235, 294.

[3] "Statutes at Large," iii., 192; "Public Lands," ii., 897.

[4] "State Papers, Finance," iii., 281. List of rejected claims in "Public Lands," iii., 549.

On account of failure to pay part of the purchase money the members of the New England Mississippi Company were not allowed their full share of the compensation. Their appeal from the commissioners secured from Congress many favorable reports but no legislation, and was finally decided against them by the Court of Claims in 1864. See in particular Senate Document No. 205, 23d Congress, first session; Senate Document No. 212, 24th Congress, second session; 1 Mason, 191; 4 Wheaton, 255; 1 Court of Claims, 135; and consult under New England Mississippi Land Company, Poore's "Catalogue of Government Publications," and the House List of Private Claims (1850). For later claims under the Tennessee Company, see 2 Opinions of the Attorney General, 35; Reports of Committees, No. 236, 22d Congress, first session.

delay of Congress in providing for a settlement of the claims, much of this amount went, not to the defrauded claimants, but to those who had purchased from them at a discount. Thus were secured but imperfectly the benefits of a compromise probably just and unquestionably expedient.